



**NOTICE OF PROPOSED RULEMAKING
AMENDMENT TO TITLE 14, CA CODE OF REGULATIONS
REGARDING SECTION 5093.36 OF THE PUBLIC RESOURCES CODE**

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the Department of Parks and Recreation (DPR) is proposing to take the action described in the Informative Digest.

PUBLIC HEARINGS

The Department will hold two public hearings on the proposed rulemaking. The hearings will be held:

Date: April 14, 2009
Time: 5:00 p.m. – 7:00 p.m.
Location: California Citrus State Historic Park
9400 Dufferin Avenue
Riverside, CA

-and-

Date: May 12, 2009
Time: 1:00 p.m. – 3:00 p.m.
Location: Resources Building – Room 905, 9th Floor
1416 9th Street
Sacramento, CA

At the hearings, any interested person, or his or her authorized representative, may present oral or written statements, arguments or contentions relevant to the proposed action described in the Informative Digest. The Department may impose reasonable limits on oral presentations. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the conclusion of their remarks. Additionally, pursuant to Government Code section 11125.1, any information presented to the Department during the open hearings in connection with the matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Department and shall be made available upon request.

Written comments other than those presented at the public hearings may be submitted to the Department as described below.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relative to the proposed rulemaking to the Department. The written comment period ends at 5:00 p.m., on May 11, 2009. The Department will consider only written

comments (in addition to those comments received at the public hearings) received at the Department's office by that time. All written comments shall be submitted to the following address:

Department of Parks and Recreation
Natural Resources Division
Attn: Keith Demetrak
P.O. Box 942896
Sacramento, CA 94296-0001

Written comments may also be submitted by facsimile (FAX) at (916) 657-3355 or by email to kdeme@parks.ca.gov. Comments must be submitted prior to 5:00 p.m. on May 11, 2009.

AUTHORITY AND REFERENCE

Pursuant to authority vested by Assembly Bill 2945 (Chapter 689 of 2008) and Sections 5001, 5001.8 and 5003 of the Public Resources Code, and to implement, interpret or make specific section 5093.36 of the Public Resources Code, the Department of Parks and Recreation is considering changes to Division 3 of Title 14 of the California Code of Regulations as follows: Amendment of Chapter 2, section 4351 and adoption of Chapter 2, section 4351.1, to modify procedures by which the Department of Parks and Recreation administers state wildernesses within the California State Park System.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

For many years, the California Department of Parks and Recreation has grappled with ambiguities in the California Wilderness Act (Public Resources Code Section 5093.30 *et seq.*) on how best the Department could undertake what it deemed to be needed management actions in State Wilderness area while protecting wilderness values and character. Recently, Assembly Bill 2945 (Chapter 689 of 2008) amended PRC Sections 5093.32 and 5093.36 to allow "a state agency with jurisdiction over a wilderness area may authorize measures that address environmental damage or degradation affecting wilderness character and resources if those measures are consistent with the minimum management requirements and only the minimum tools are used." The bill further requires that the "guidelines for the determination of the minimum management requirements and the minimum tool shall be adopted by regulation."

Current California Code of Regulations (CCR) section 4351 prohibits driving, operating, leaving, placing, landing, taxiing, taking off or stopping a motor vehicle, motorboat or aircraft within the boundaries of a state wilderness or natural preserve. The proposed amendment of CCR section 4351 would delete reference to state wildernesses from this CCR section but leave the remainder of the section unchanged. The types of activities listed in CCR section 4351 would be regulated within state wildernesses in proposed CCR section 4351.1.

Proposed CCR section 4351.1 would require there be no use of motorized vehicles, motorized equipment or motorboats, landing or hovering of aircraft, flying of aircraft lower than 2,000 feet above the ground, other form of mechanical transport, and no

permanent structure or installation within any state wilderness unless the Director of the Department of Parks and Recreation, or his/her designee, makes specified findings in writing (Findings,) except in cases where it is necessary in an emergency involving the health and safety of persons within the wilderness area.

The specified Findings to be made include:

- the use of motorized vehicles, motorized equipment or motorboats, the landing, hovering, or flying of aircraft lower than 2,000 feet above the ground, the use of any other form of mechanical transport, or the placement of a temporary structure or installation must be temporary and meet a minimum management requirement. A minimum management requirement is defined in AB 2945 as “the minimum wilderness management actions that are necessary to administer a wilderness for the purposes of this chapter.”
- the approach proposed to perform the minimum management requirement will make use of the “minimum tool” to best preserve wilderness values under the given circumstances. The “minimum tool” is defined in AB 2945 as “the least intrusive tool, equipment, device, regulation, action, or practice that will achieve the minimum management requirements.”
- the result of the work will be a condition as near as natural as possible and shall leave no permanent trace or permanent structure.

In coming to these Findings, the Department will be guided by the comparable policies of the National Park Service:

“All management decisions affecting wilderness must be consistent with a minimum requirement concept... When determining minimum requirement, the potential disruption of wilderness character and resources will be considered before, and given significantly more weight than, economic efficiency and convenience. If a compromise of wilderness resource or character is unavoidable, only those actions that preserve wilderness character and/or have localized, short-term adverse impacts will be acceptable.”

NPR Management Policies: 6.3.5 Minimum Requirement

Only when the above Findings are made would the Director be able to authorize employees or agents of the Department of Parks and Recreation to occupy or use a state wilderness within the State Park System on a case-by-case basis to undertake a minimum management requirement.

Prior to the Director making the Findings, Department staff would be required to make a recommendation on the proposed findings to the Director that would provide sufficient background, analysis, data and research to allow the Director to evaluate the material considerations for the Findings. The recommendation made by Department staff would be required to include:

- an analysis as to whether a wilderness management need exists;
- a description of the proposed minimum management requirement and minimum tools to be used, including when, where and the time frame for the proposed action;
- the alternative approaches considered, including a discussion of the pros and cons of the alternatives; and
- any measures that could reasonably be taken to minimize the effects of proposed activities.

Proposed CCR section 4351.1 also states that the process described in this proposed regulation will not replace or supplant any required analysis under the California Environmental Quality Act.

The proposed regulation would require that an analysis be conducted of all minimum management requirement actions being considered for state wildernesses that propose to implement one of the California Wilderness Act's prohibited uses. Examples of minimum management requirement actions include but are not limited to habitat restoration, invasive species removal, scientific research, and monitoring. These types of management actions would be assessed to determine if they are necessary and, if so, how they can be implemented through use of the minimum tools and with the least impact on the wilderness values and character.

COMPARABLE FEDERAL REGULATION OR STATUTE

This proposed regulation applies only to California state wildernesses as designated by the California Wilderness Act and does not duplicate or conflict with Federal regulations. This proposed regulation does mimic well-established Federal regulations (Code of Federal Regulations (CFR), Title 36, Volume 1, Chapter I, parts 1-199; CFR, Title 36, Volume 2, Chapter II, parts 200-299; CFR, Title 43, Volume 1, Chapter I, Subtitle B, parts 200-499; CFR, Title 43, Volume 2, Chapter II, parts 1000-9999) that apply only to wilderness areas designated by the federal Wilderness Act, (16 USC, Chapter 23, sections 1131 to 1136).

LOCAL MANDATE

This regulatory proposal does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES

This regulatory proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

COSTS OR SAVINGS TO STATE AGENCIES

The Department of Parks and Recreation estimates there would be no direct costs to any State agency in complying with this proposed regulation. Any analysis, recommendation, and Findings regarding proposed minimum required management actions in a state wilderness would be preliminary to and would become a part of any subsequent compliance by the Department of Parks and Recreation with the California

Environmental Quality Act, therefore, no additional cost would be incurred by the Department to comply with this proposed regulation.

BUSINESS IMPACTS/SMALL BUSINESS

The Department of Parks and Recreation has made an initial determination that this regulatory proposal would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by Government Code section 11342.610.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

The Department of Parks and Recreation has determined that this regulatory proposal will not have any impact on the creation or jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Department of Parks and Recreation is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS:

None

ALTERNATIVES

The Department of Parks and Recreation must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the adoption of this regulation is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the close of the public comment period, the Department of Parks and Recreation may adopt the proposed regulations substantially as described in this notice. If the Department of Parks and Recreation makes modifications which are sufficiently related to the originally proposed text, the modified text with changes clearly indicated shall be available to the public for at least 15 days before the Department of Parks and Recreation adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the contact person or designated back-up contact person listed below. The Department of Parks and Recreation will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available. Once the final statement of reasons is prepared in accordance with subdivision (a) of Section 11346.9 of the Government Code, copies may be obtained at <http://www.parks.ca.gov> or by contacting Keith Demetrak, who is listed below as the contact person, or Jim Trumbly, who is listed below as the designated back-up contact person.

CONTACT PERSONS

Inquiries concerning the proposed adoption of this regulation and written comments may be directed to:

Keith Demetrak
Department of Parks and Recreation
Natural Resources Division
P.O. Box 942896
Sacramento, CA 94296-0001
(916) 657-1151

or backup contact:

Jim Trumbly
Department of Parks and Recreation
Natural Resources Division
P.O. Box 942896
Sacramento, CA 94296-0001
(916) 653-6725

INITIAL STATEMENT OF REASONS AND INFORMATION

The Department of Parks and Recreation has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Department of Parks and Recreation, Natural Resources Division at P.O. Box 94296, Sacramento, CA 94296-0001. These documents may also be viewed and downloaded from the Department of Parks and Recreation website at www.parks.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person(s) named above. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person(s) named above.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.parks.ca.gov.